THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No. 1930 of 1998
Date:24-07-2007

Between:
S.Rajasekhar Reddy and others

Petitioners

And

The Rayachoti Rural Electricity Supply Cooperative Society,rep. by it's Managing Director, Rayachoti,Cuddapah District

Respondent

THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.1930 of 1998

ORDER:

1. The three writ petitioners were initially recruited to the post of Load Surveyors. While they were working as Load Surveyors, they were placed incharge of the post of Additional Assistant Engineer, which is a superior post. But however, as they were only kept incharge of the post of Additional Assistant Engineer; they were not paid the salary and allowances attached to the said post, but were paid salaries attached to the substantive post of Load Surveyor. In those set of circumstances, the writ petitioners appear to have filed W.P.No.2984 of 1996 in this court seeking directions to the respondent to pay the salary and allowances attached to the post of Additional Assistant Engineers. Pursuant to the interim directions granted by this court, an order was passed directing the salary and allowances of the petitioners to be drawn at the minimum of the time scale of Rs.3460-5400 with effect from 19-02-1996. The writ petitioners assert that by an order passed on 28-02-1997 their claim was upheld and the writ petition was allowed by this court.

2. However, pending enquiry into certain allegations levelled against the petitioners, the first and third petitioners were placed under suspension by proceedings dated 14-3-1997 while the second petitioner was placed under suspension through proceedings dated 12-02-1997. At the end of the enquiry, the first and third petitioners have been reinstated into service on 07-11-1997 while the second

petitioner was reinstated on 19-11-1997. In the case of the first petitioner, it was ordered that the period of suspension be treated as 'spent on duty', whereas in the case of petitioners 2 and 3 the period of suspension is ordered to be treated as "leave period". It is not in dispute that during the period of their suspension they were paid subsistence allowance and subsequently the impugned order was passed on 16-01-1998 directing the first petitioner to credit the excess amount paid during the period of his suspension. The reason assigned for passing such an order is that the writ petitioners have not discharged the functions of Additional Assistant Engineers during the period of their suspension and hence they are not entitled to be paid subsistence allowance as is payable to Additional Assistant Engineers. Since they are holding the substantive posts of Load Surveyors, the respondent reasons it out that the subsistence allowance also had got to be paid keeping the scale of pay attached to the post of Load Surveyors in view . It is not in dispute that the service conditions of the writ petitioners are regulated by the rules framed by the respondent, which are exhibited at Page 6 of the paper book.

3. The expression "Pay" has been defined in the following terms:

"PAY" means the Basic Pay drawn by an employee as :

i) The pay which has been sanctioned for the post held by him substantively or in an officiating capacity or to which he is entitled by reason of his position in a cadre.

ii) Special pay and personal pay.

4. Rule 9 (2) has spelt out that if an employee is found not guilty he shall be entitled to the pay or wages and all other benefits for the period he was under suspension at the end of any enquiry. Therefore, the respondent is liable to pay the pay which has been sanctioned for the post held by an employee substantively or in an officiating capacity. It is not in dispute that at the time when the writ petitioners were placed under suspension in February/March,1997, they were

holding the charge of the post of Additional Assistant Engineer and are officiating as such. Further their pay and allowances are drawn at the minimum of the scale of pay Rs.3460-5400 with effect from 19-02-1996 in terms of the order passed by this court, while entertaining W.P.No.2984 of 1996 instituted by the writ petitioners. Therefore, the subsistence allowance which is payable in terms of Rule 9 has also got to be regulated based upon the scale of pay attached to the post of Additional Assistant Engineer, which post the writ petitioners are holding at the time they were placed under suspension.

5. In this view of the matter, the payment of subsistence allowance has got to be regulated taking into consideration and account the fact that the petitioners were discharging and officiating the functions and duties of the post of Additional Assistant Engineers and the scale of pay attached to the said post is Rs.3460-5400. Therefore, the question of payment of excessive subsistence allowance to the writ petitioners as such does not arise. It is altogether a different thing that the writ petitioners have come to discharge the functions as Load Surveyors, the substantive post which held by them upon their reinstatement from out of suspension. It has got nothing to do with the pay for which they are entitled during the period of their suspension. For this reason, the impugned order is not sustainable and it is accordingly set-aside.

6. The writ petition is disposed of, but however, without costs.

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NOOTY RAMAMOHANA RAO,J

24-07-2007
Stp